

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL JAMES NISSEN,

Petitioner,

vs.

No. CIV 21-0505 JB/SMV
No. CR 19-0077 JB

UNITED STATES OF AMERICA,

Respondent.

FINAL ORDER ON THE MANDATE

THIS MATTER comes before the Court sua sponte. Plaintiff Michael James Nissen was charged in case No. CR 19-0077 JB. Following a jury trial, Nissen was convicted of two counts of Interstate Communication Containing Threat to Injure the Person of Another in violation of 18 U.S.C. § 875(c). See Jury Verdict, No. CR 19-0077, filed August 7, 2019 (Doc. 73). On June 1, 2021, Nissen filed a motion under 28 U.S.C. § 2255, raising a claim that he is “[b]eing denied due process of law and equal protection clauses of the Constitution.” Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, No. 19-0077 JB at 4, filed June 1, 2021 (Doc. 188) (“Motion”). Nissen sought to “vacate void judgment for being denied due process of law.” Motion at 12. At the time that Nissen filed the Motion, Nissen had not been sentenced. The Court entered its Memorandum Opinion and Order dismissing the § 2255 Motion as premature, because, although Nissen had been convicted, he was not “in custody under a sentence of a court established by Act of Congress” at the time he filed his Motion, as § 2255(a) requires. See Memorandum Opinion and Order, No. CR19-0077, at 1, filed June 30, 2021 (Doc. 210). Nissen was sentenced on June 18, 2021. See Sentencing Minute Sheet, filed June 18, 2021

(Doc. 213). The Court also entered Final Judgment dismissing the § 2255 civil proceeding. See Final Judgment, No. CIV21-0505 JB/SMV, filed June 30, 2021 (Doc. 9).

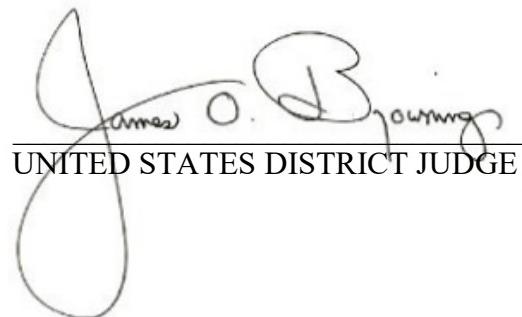
On the same day that the Court entered the Memorandum Opinion and Order and the Final Judgment, Nissen mailed his Affidavit of Due Process of Law Violation for Excluding Movant From Proceedings on Ruling Dismissing 28 U.S.C. § 2255. See Affidavit of Due Process of Law Violation for Excluding Movant From Proceedings on Ruling Dismissing 28 U.S.C. § 2255, at 1, 5, No. CIV 21-0505 JB/SMV, filed July 6, 2021 (Doc. 10) (“First Affidavit”). The Court received the First Affidavit on July 6, 2021. See First Affidavit at 2. Nissen mailed a Second Affidavit of Formal Objection of Memorandum Opinion of Order and Final Judgment on July 7, 2021. See Affidavit of Formal Objection of Memorandum Opinion of Order and Final Judgment, at 1, 9, No. CIV 21-0505 JB/SMV, filed July 9, 2021 (Doc. 11) (“Second Affidavit”). The Court received the Second Affidavit on July 9, 2021. See Second Affidavit at 2. Nissen then sent to the United States Court of Appeals for the Tenth Circuit a Request of a Certificate of Appealability, which the Tenth Circuit transmitted to the Court as a misdirected Notice of Appeal. See Misdirected Notice of Appeal at 1, 3-9, No. CIV 21-0505 JB/SMV, filed July 15, 2021 (Doc. 12).

Nissen also filed a Notice of Appeal, appealing from his conviction and sentence in the criminal case. See Notice of Appeal at 1, No. CR 19-0077 JB, filed July 6, 2021 (Doc. 214). The Tenth Circuit determined that the criminal appeal was premature and ordered that proceeding held in abeyance until Final Judgment is entered in the criminal case. Order, at 1, No. CR 19-0077 JB, filed July 8, 2021 (Doc. 217). The Court entered Final Judgment on his criminal conviction and sentence on August 27, 2021. See Final Judgment, No. CR 19-0077 JB, filed August 27, 2021 (Doc. 226). Nissen’s direct appeal from the criminal conviction and sentence remains pending before the Tenth Circuit.

On September 1, 2021, Nissen filed a Notice of Motion for Dismissal of Actions for the Court Lacks Subject Matter Jurisdiction. See Notice of Motion for Dismissal of Action for the Court Lacks Subject Matter Jurisdiction, No. CIV21-0505 JB/SMV, filed September 1, 2021 (Doc. 26). It is unclear whether Nissen intended his filing as a notice or as a motion. To the extent the document can be construed as a motion, the Court denies the motion as moot in light of this Court's dismissal of the case.

On September 20, 2021, the Tenth Circuit denied a Certificate of Appealability and issued its Mandate in Nissen's civil case, No. CIV 21-0505 JB/SMV. See Order Denying Certificate of Appealability, at 1, No. CIV 21-0505 JB/SMV, filed September 20, 2021 (Doc. 27). The Tenth Circuit dismissed Nissen's appeal of the decision that his § 2255 Motion was premature. See Order Denying Certificate of Appealability at 1. The Tenth Circuit attached a copy of the Court's ruling to its Order, stating that, "[f]or the reasons stated in the district court's Order, Defendant's appeal from dismissal thereof is similarly premature." Order Denying Certificate of Appealability at 2.

IT IS ORDERED that: (i) the Plaintiff's Notice of Motion for Dismissal of Action for the Court Lacks Subject Matter Jurisdiction, No. CIV 21-0505 JB/SMV, filed September 1, 2021 (Doc. 26), is denied as moot; and (ii) on the Mandate of the United States Court of Appeals for the Tenth Circuit, this civil case, CIV 21-0505 JB/SMV, is closed.



James O. Bowning
UNITED STATES DISTRICT JUDGE

Parties:

Michael James Nissen
Milan, New Mexico

Plaintiff Pro Se